

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:09-CV-405-FDW-DCK**

THIS MATTER IS BEFORE THE COURT *sua sponte* following the filing of “Defendant’s Motion To Dismiss” (Document No. 8). Plaintiff has failed to file a response to the pending motion and the time to do so has lapsed. This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b), and is now ripe disposition. After careful consideration of the record and applicable authority the undersigned will respectfully recommend that the motion to dismiss be granted.

Pro se Plaintiff Doris J. Reese (“Plaintiff”) filed a “Complaint” (Document No. 2) in this Court on September 21, 2009. “Defendant’s Motion To Dismiss” was filed on January 20, 2010, and Plaintiff failed to file a timely response. On June 21, 2010, the pending motion was referred to the undersigned for review. On June 22, 2010, the undersigned issued an Order *sua sponte*, allowing Plaintiff until July 21, 2010, to respond to “Defendant’s Motion To Dismiss.” In accordance with the dictates of Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the undersigned advised Plaintiff that she had the right to file a response in opposition to the pending motion, and that failure to do

so might lead to the dismissal of her lawsuit. To date, Plaintiff has failed to file a response to the pending motion, or otherwise respond to the Court's most recent Order.

IT IS, THEREFORE, RECOMMENDED that "Defendant's Motion To Dismiss" (Document No. 8) be **GRANTED**.

NOTICE OF APPEAL RIGHTS

The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within fourteen (14) days of service of same. Responses to objections may be filed within fourteen (14) days after service of the objections. Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Snyder v. Ridenhour, 889 F.2d 1363, 1365 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), reh'g denied, 474 U.S. 1111 (1986).

The Clerk is directed to send copies of this Memorandum and Recommendation to the parties and to the Honorable Frank D. Whitney.

IT IS SO RECOMMENDED.

Signed: August 2, 2010



David C. Keesler
United States Magistrate Judge
